

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation)
Against:)**

BENJAMIN LEHR, M.D.)

Case No. 04-2012-226025

**Physician's and Surgeon's)
Certificate No. C 25019)**

Respondent)

_____)

DECISION

**The attached Stipulated Surrender of License and Disciplinary Order
is hereby adopted as the Decision and Order of the Medical Board of
California, Department of Consumer Affairs, State of California.**

This Decision shall become effective at 5:00 p.m. on October 28, 2015

IT IS SO ORDERED October 21, 2015.

MEDICAL BOARD OF CALIFORNIA

By:


**Kimberly Kirchmeyer
Executive Director**

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 MARTIN W. HAGAN
Deputy Attorney General
4 State Bar No. 155553
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2094
7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 04-2012-226025

14 **BENJAMIN LEHR, M.D.**
15 **1609 West Barbara Worth Drive, Apt. 104**
El Centro, CA 92243

STIPULATED SURRENDER OF
LICENSE AND DISCIPLINARY ORDER

16 **Physician's and Surgeon's Certificate No.**
17 **C25019,**

18 Respondent.

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (complainant) is the Executive Director of the Medical Board
23 of California and is represented in this matter by Kamala D. Harris, Attorney General of the State
24 of California, by Martin W. Hagan, Deputy Attorney General.

25 2. Benjamin Lehr, M.D. (respondent) is representing himself and has chosen not to
26 exercise his right to be represented by counsel, at his own expense, in this matter.

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3. On or about April 23, 1963, the Medical Board of California issued Physician's and Surgeon's Certificate No. C25019 to respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges and allegations brought in Accusation No. 04-2012-226025, expired on November 30, 2014, and has not been renewed.

JURISDICTION

4. On July 9, 2015, Accusation No. 04-2012-226025 was filed before the Medical Board of California (Board), Department of Consumer Affairs, and is currently pending against respondent. A true and correct copy of Accusation No. 04-2012-226025 and all other statutorily required documents were properly served on respondent on July 9, 2015. A true and correct copy of Accusation No. 04-2012-226025 is attached hereto as Exhibit A and incorporated by reference as if fully set forth herein.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read and fully understands the charges and allegations in Accusation No. 04-2012-226025. Respondent also has carefully read and fully understands the effects of this Stipulated Surrender of License and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent hereby voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 **CULPABILITY**

2 8. Respondent admits the complete truth and accuracy of each and every charge and
3 allegation in Accusation No. 04-2012-226025, agrees that cause exists for discipline, and hereby
4 surrenders his Physician's and Surgeon's Certificate No. C25019 for the Board's formal
5 acceptance.

6 9. Respondent agrees that his Physician's and Surgeon's Certificate No. C25019 is
7 subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth
8 in the Disciplinary Order below.

9 10. Respondent further agrees that if he ever petitions for reinstatement of his Physician's
10 and Surgeon's Certificate No. C25019, or if an accusation or petition to revoke probation is ever
11 filed against him before the Medical Board of California, all of the charges and allegations
12 contained in Accusation No. 04-2012-226025 shall be deemed true, correct, and fully admitted by
13 respondent for purposes of any such proceeding or any other licensing proceeding involving
14 respondent in the State of California or elsewhere.

15 11. Respondent understands that by signing this stipulation he enables the Executive
16 Director of the Board to issue an order, on behalf of the Board, accepting the surrender of his
17 Physician's and Surgeon's Certificate No. C25019 without further notice to, or opportunity to be
18 heard by, respondent.

19 **CONTINGENCY**

20 12. Business and Professions Code section 2224, subdivision (b), provides, in pertinent
21 part, that the Medical Board "shall delegate to its executive director the authority to adopt a . . .
22 stipulation for surrender of a license."

23 13. This Stipulated Surrender of License and Disciplinary Order shall be subject to
24 approval of the Executive Director on behalf of the Medical Board. The parties agree that this
25 Stipulated Surrender of License and Disciplinary Order shall be submitted to the Executive
26 Director for her consideration in the above-entitled matter and, further, that the Executive
27 Director shall have a reasonable period of time in which to consider and act on this Stipulated
28 Surrender of License and Disciplinary Order after receiving it. By signing this stipulation,

1 respondent fully understands and agrees that he may not withdraw his agreement or seek to
2 rescind this stipulation prior to the time the Executive Director, on behalf of the Medical Board,
3 considers and acts upon it.

4 14. The parties agree that this Stipulated Surrender of License and Disciplinary Order
5 shall be null and void and not binding upon the parties unless approved and adopted by the
6 Executive Director on behalf of the Board, except for this paragraph, which shall remain in full
7 force and effect. Respondent fully understands and agrees that in deciding whether or not to
8 approve and adopt this Stipulated Surrender of License and Disciplinary Order, the Executive
9 Director and/or the Board may receive oral and written communications from its staff and/or the
10 Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the
11 Executive Director, the Board, any member thereof, and/or any other person from future
12 participation in this or any other matter affecting or involving respondent. In the event that the
13 Executive Director on behalf of the Board does not, in her discretion, approve and adopt this
14 Stipulated Surrender of License and Disciplinary Order, with the exception of this paragraph, it
15 shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied
16 upon or introduced in any disciplinary action by either party hereto. Respondent further agrees
17 that should this Stipulated Surrender of License and Disciplinary Order be rejected for any reason
18 by the Executive Director on behalf of the Board, respondent will assert no claim that the
19 Executive Director, the Board, or any member thereof, was prejudiced by its/his/her review,
20 discussion and/or consideration of this Stipulated Surrender of License and Disciplinary Order or
21 of any matter or matters related hereto.

22 **ADDITIONAL PROVISIONS**

23 15. This Stipulated Surrender of License and Disciplinary Order is intended by the parties
24 herein to be an integrated writing representing the complete, final and exclusive embodiment of
25 the agreements of the parties in the above-entitled matter.

26 16. The parties agree that copies of this Stipulated Surrender of License and Disciplinary
27 Order, including copies of the signatures of the parties, may be used in lieu of original documents
28 and signatures and, further, that such copies shall have the same force and effect as originals.

17. In consideration of the foregoing admissions and stipulations, the parties agree the Executive Director of the Medical Board may, without further notice to or opportunity to be heard by respondent, issue and enter the following Disciplinary Order on behalf of the Board:

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C25019, issued to respondent Benjamin Lehr, M.D., is surrendered and accepted by the Medical Board of California.

1. The surrender of respondent's Physician's and Surgeon's Certificate No. C25019 and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against respondent. This stipulation constitutes a record of the discipline and shall become a part of respondent's license history with the Medical Board of California.

2. Respondent shall lose all rights and privileges as a Physician and Surgeon in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 04-2012-226025 shall be deemed true, correct and fully admitted by respondent when the Board determines whether to grant or deny the petition.

5. If respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation No. 04-2012-226025 shall be deemed true, correct, and fully admitted by respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

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ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Disciplinary Order. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. C25019. I enter into this Stipulated Surrender of License and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED:

9/15/2015

Benjamin Lehr
BENJAMIN LEHR, M.D.
Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

Dated:

9/29/15

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
THOMAS S. LAZAR
Supervising Deputy Attorney General

Martin W. Hagan
MARTIN W. HAGAN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 04-2012-226025

KAMALA D. HARRIS
Attorney General of California
THOMAS S. LAZAR
Supervising Deputy Attorney General
MARTIN W. HAGAN
Deputy Attorney General
State Bar No. 155553
600 West Broadway Street, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2094
Facsimile: (619) 645-2061

Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 04-2012-226025

BENJAMIN LEHR, M.D.
2217 Pepper Dr.
El Centro, CA 92243-9413

A C C U S A T I O N

**Physician's and Surgeon's Certificate
No. C25019,**

Respondent.

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about April 23, 1963, the Medical Board issued Physician's and Surgeon's Certificate Number C25019 to Benjamin Lehr, M.D. (Respondent). The Physician's and Surgeon's Certificate expired on November 30, 2014, and has not been renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, be placed on probation and required to pay the costs of probation monitoring, be publicly reprimanded and ordered to complete relevant educational courses, or have such other action taken in relation to discipline as the Board or an administrative law judge deems proper.

5. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

1 "..."

2 6. Section 2242 of the Code states:

3 "(a) Prescribing, dispensing, or furnishing dangerous drugs as defined
4 in Section 4022 without an appropriate prior examination and a medical indication,
5 constitutes unprofessional conduct.

6 "(b) No licensee shall be found to have committed unprofessional
7 conduct within the meaning of this section if, at the time the drugs were prescribed,
8 dispensed, or furnished, any of the following applies:

9 "(1) The licensee was a designated physician and surgeon or podiatrist
10 serving in the absence of the patient's physician and surgeon or podiatrist, as the
11 case may be, and if the drugs were prescribed, dispensed, or furnished only as
12 necessary to maintain the patient until the return of his or her practitioner, but in
13 any case no longer than 72 hours.

14 "(2) The licensee transmitted the order for the drugs to a registered
15 nurse or to a licensed vocational nurse in an inpatient facility, and if both of the
16 following conditions exist:

17 "(A) The practitioner had consulted with the registered nurse or
18 licensed vocational nurse who had reviewed the patient's records.

19 "(B) The practitioner was designated as the practitioner to serve in the
20 absence of the patient's physician and surgeon or podiatrist, as the case may be.

21 "(3) The licensee was a designated practitioner serving in the absence
22 of the patient's physician and surgeon or podiatrist, as the case may be, and was in
23 possession of or had utilized the patient's records and ordered the renewal of a
24 medically indicated prescription for an amount not exceeding the original
25 prescription in strength or amount or for more than one refill.

26 "(4) The licensee was acting in accordance with Section 120582 of the
27 Health and Safety Code."

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1 7. Section 725 of the Code states:

2 “(a) Repeated acts of clearly excessive prescribing, furnishing,
3 dispensing, or administering of drugs or treatment, repeated acts of clearly
4 excessive use of diagnostic procedures, or repeated acts of clearly excessive use of
5 diagnostic or treatment facilities as determined by the standard of the community of
6 licensees is unprofessional conduct for a physician and surgeon, dentist, podiatrist,
7 psychologist, physical therapist, chiropractor, optometrist, speech-language
8 pathologist, or audiologist.

9 “(b) Any person who engages in repeated acts of clearly excessive
10 prescribing or administering of drugs or treatment is guilty of a misdemeanor and
11 shall be punished by a fine of not less than one hundred dollars (\$100) nor more
12 than six hundred dollars (\$600), or by imprisonment for a term of not less than 60
13 days nor more than 180 days, or by both that fine and imprisonment.

14 “(c) A practitioner who has a medical basis for prescribing, furnishing,
15 dispensing, or administering dangerous drugs or prescription controlled substances
16 shall not be subject to disciplinary action or prosecution under this section.

17 “(d) No physician and surgeon shall be subject to disciplinary action
18 pursuant to this section for treating intractable pain in compliance with Section
19 2241.5.”

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Gross Negligence)**

3 8. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined
4 by section 2234, subdivision (b), of the Code, in that he committed gross negligence in his care
5 and treatment of patients D.L.; J.B. and C.D., as more particularly alleged hereinafter:

6 **PATIENT D.L.**

7 9. On or about October 27, 2006, respondent began treating patient D.L., a then-47 year
8 old male with chronic diagnoses which included, but were not limited to, chronic obstructive
9 pulmonary disease (COPD), alcoholism, anxiety, seizure, bipolar, social phobia, history of stroke,
10 myocardial infarction and hepatitis C.¹

11 10. During the period of on or about July 19, 2008, to on or about May 20, 2009,
12 respondent had numerous visits with patient D.L. For the majority of these visits, there was no
13 physical examination performed or documented and the patient histories were non-existent and/or
14 inadequate. In addition, for the majority of these visits there was also no documentation
15 regarding, among other things, injury specifics, ongoing specific symptoms, past imaging and/or
16 testing, risks of opiate use and/or other controlled substances, justification for any changes in
17 controlled substances, any management plan for the patient and/or any documentation indicating
18 periodic drug screening, efforts to monitor compliance and/or measures to ensure respondent was
19 not diverting controlled substances or taking additional controlled substances.

20 11. On or about November 10, 2010, patient D.L. was admitted to the emergency room at
21 El Centro Regional Medical Center (RMC) where another physician examined him. The patient
22 was seen for chest pain and shortness of breath, which was determined to be non-cardiac in
23 nature. Patient D.L. was given pain medication and discharged home. The medical
24 documentation noted that patient D.L. was using Percocet 1 tab four times a day; Xanax 0.5 mg
25 four times a day; Vicodin 1 tab four times a day; and other pain related medications.

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27 ¹ Conduct occurring more than seven (7) years from the filing date of this Accusation is
28 for informational purposes only and is not alleged as a basis for disciplinary action.

1 12. During the period of on or about November 20, 2010, to on or about February 6,
2 2011, respondent had approximately nine visits with patient D.L. For the majority of these visits,
3 there was no physical examination performed or documented, and the patient histories were non-
4 existent and/or inadequate. In addition, for the majority of these visits there was also no
5 documentation regarding, among other things, injury specifics, ongoing specific symptoms, past
6 imaging and/or testing, risks of opiate use and/or other controlled substances, justification for any
7 changes in controlled substances, any management plan for the patient and/or any documentation
8 indicating periodic drug screening, efforts to monitor compliance and/or measures to ensure
9 respondent was not diverting controlled substances or taking additional controlled substances.

10 13. On or about February 7, 2011, patient D.L. was admitted to the El Centro RMC with
11 a chief complaint of chest pain and esophageal pain. The admission note indicates, among other
12 things, that patient D.L. had been drinking and that he "complains of pain all over the body and
13 requests narcotics." The past medical history is noted as positive for, among other things,
14 hepatitis C, chronic lower back pain, COPD, myocardial infarction and history of chronic narcotic
15 use. The assessment was "abdominal pain after an alcoholic binge related to mild pancreatitis
16 and possible gastritis with GERD."

17 14. On or about March 8, 2011, patient D.L. was admitted again to the El Centro RMC
18 for chest pain and esophageal pain. Patient D.L. was noted to have been drinking and "complains
19 of pain all over the body and requests narcotics." The admission diagnoses were alcoholic
20 pancreatitis disease, tobacco abuse, chronic narcotic use and history of seizure disorder. Patient
21 D.L. was diagnosed as having acute pancreatitis secondary to alcohol use and was, among other
22 things, placed on IV fluids and clear liquids. His medications were listed as Albuterol, Depakote
23 500 mg in the morning and 1000 mg at nighttime, Vicodin, OxyContin, Xanax and Percocet.
24 Patient was discharged against medical advice on March 20, 2011. The "primary care physician"
25 section of the discharge note indicates, "None identified, although somehow he [patient D.L.] gets
26 his Depakote and pain medications from an MD in the community."

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1 15. During the period of on or about July 2, 2012, to on or about September 4, 2012,
2 respondent issued three prescriptions to patient D.L. for hydrocodone APAP (with
3 acetaminophen) 5/500² mg in the total amount of 480 tabs and three prescriptions for OxyContin³
4 30 mg in the total amount of 270 tabs. This prescribing pattern represented a morphine
5 equivalent dosage in excess of 160 mg per day and an acetaminophen dosage of 2.5 grams per
6 day. The morphine equivalent dosage in excess of 160 mg per day exceeded the acceptable level.

7 16. During the period of on or about January 3, 2011, to on or about April 9, 2013,
8 respondent had numerous visits with patient D.L. For the majority of these visits, there was no
9 physical examination performed or documented and the patient histories were non-existent and/or
10 inadequate. In addition, for the majority of these visits there was also no documentation
11 regarding, among other things, injury specifics, ongoing specific symptoms, past imaging and/or
12 testing, risks of opiate use and/or other controlled substances, justification for any changes in
13 controlled substances, any management plan for the patient and/or any documentation indicating
14 periodic drug screening, efforts to monitor compliance and/or measures to ensure respondent was
15 not diverting controlled substances or taking additional controlled substances.

16 17. Respondent committed gross negligence in his care and treatment of D.L., which
17 included, but was not limited to, the following:

- 18 (a) Respondent repeatedly prescribed narcotics and controlled substances,
19 to patient D.L. without an adequate history and physical examination including,
20 but not limited to, obtaining a more detailed history, reviewing and verifying prior
21 medical treatment, conducting a more thorough review of symptoms and/or more
22

23 ² The mixture of hydrocodone and acetaminophen (trade names Lorcet, Lortab and
24 Vicodin) is a Schedule III controlled substance from the opiates class pursuant to Health and
25 Safety Code section 11056, subdivision (e), and Title 21 of the Code of Federal Regulations,
section 1308.13, subdivision (e)(1)(iv), and is a dangerous drug pursuant to Business and
Professions Code section 4022. It is indicated for relief of moderate to moderately severe pain.

26 ³ OxyContin is a brand name for oxycodone, a Schedule II controlled substance from the
27 opiates class pursuant to Health and Safety Code section 11055, subdivision (b), and Title 21 of
28 the Code of Federal Regulations, section 1308.12, subdivision (b)(1)(xiii), and a dangerous drug
pursuant to Business and Professions Code section 4022.

1 accurately assessing the patient's actual condition and, thus, repeatedly prescribed
2 narcotics and controlled substances to patient D.L. without adequate justification;

3 (b) Respondent repeatedly prescribed narcotics and controlled substances
4 to patient D.L. without clearly documenting an adequate treatment plan with stated
5 objectives for the patient's care and treatment in regard to the narcotics and
6 controlled substances that were prescribed;

7 (c) Respondent repeatedly prescribed narcotics and controlled substances
8 to patient D.L. without adequate informed consent of the various risks associated
9 with the narcotics and controlled substances that were being prescribed and the
10 possibility of alternative non-narcotic therapies;

11 (d) Respondent repeatedly prescribed narcotics and controlled substances
12 to patient D.L. without seeking appropriate consultation from, or referring the
13 patient to, the appropriate medical specialist or specialists;

14 (e) Respondent repeatedly prescribed narcotics and controlled substances
15 to patient D.L. without utilizing urine drug screens and/or other risk screening
16 tools;

17 (f) Respondent repeatedly prescribed narcotics and controlled substances
18 to patient D.L. despite indications of addiction, without close consultation with an
19 addiction medicine specialist; and

20 (g) Respondent repeatedly prescribed narcotics and controlled substances
21 to patient D.L. which exceeded generally accepted maximum daily dosages for
22 opioids.

23 **PATIENT J.B.**

24 18. As of at least October 2009, respondent began treating patient J.B., a then-50 year old
25 male with diagnoses which included, but were not limited to, atrial fibrillation with rapid
26 ventricular response, congestive heart failure, diastolic dysfunction, obesity, hypertension,
27 chronic back pain, chronic pain syndrome, dyslipidemia, diabetic neuropathy and history of
28 gastric bypass.

1 19. During the period of on or about June 21, 2011, to on or about July 20, 2011,
2 respondent issued three prescriptions to J.B. for oxycodone APAP 5/325 mg in the total amount
3 of 720 tabs and three prescriptions for Endocet (oxycodone APAP 10/325 mg) in the total
4 amount of 360 tabs. This prescribing pattern represented a morphine equivalent dosage in excess
5 of 300 mg per day and an acetaminophen dosage of 8.77 grams per day, both of which were
6 above acceptable levels.

7 20. During the period of on or about March 27, 2012, to on or about May 29, 2012,
8 respondent issued seven prescriptions to patient J.B. for oxycodone APAP 5/325 mg in the total
9 amount of 1,380 tabs; four prescriptions of oxycodone APAP 10/325 mg in the total amount of
10 960 tabs; and one prescription of morphine⁴ 30 mg in the total amount of 40 tabs. This
11 prescribing pattern represented a morphine equivalent dosage in excess of 300 mg per day and an
12 acetaminophen dosage of 9.75 grams per day, both above acceptable levels.

13 21. Respondent committed gross negligence in his care and treatment of J.B., which
14 included, but was not limited to, the following:

15 (a) Respondent prescribed excessive amounts of controlled substances and
16 dangerous drugs to patient J.B. which exceeded the generally accepted maximum
17 daily dosages for opioids and acetaminophen.

18 **PATIENT C.D.**

19 22. As of at least December 2009, respondent treated patient C.D., a then-16 year old
20 male whose chronic medical problems included, but were not limited to, lower back pain, brain
21 aneurism and hypothyroidism.

22 23. During the period of on or about June 30, 2012, to on or about September 14, 2012,
23 respondent issued six prescriptions to patient C.D. for hydrocodone APAP 5/500 mg in the total
24 amount of 720 tabs and five prescriptions of oxycodone APAP 10/325 mg in the total amount of
25 600 tabs. This prescribing pattern represented a combined morphine equivalent dosage of

26
27 ⁴ Morphine (trade name MS Contin) is a Schedule II Controlled Substance under Health
28 and Safety Code section 11055(b)(1)(L) and a dangerous drug under Code section 4022. It is
indicated for relief of moderate to moderately severe pain.

1 approximately 137 mg per day and an acetaminophen dosage of 6 grams per day. The
2 acetaminophen dosages were above the acceptable level.

3 24. Respondent committed gross negligence in his care and treatment of C.D., which
4 included, but was not limited to, the following:

5 (a) Respondent prescribed excessive amounts of acetaminophen to patient
6 C.D. which exceeded the generally accepted maximum daily dosages.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Repeated Negligent Acts)**

9 25. Respondent is further subject to disciplinary action under sections 2227 and 2234, as
10 defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent
11 acts in his care and treatment of patients J.B., D.L. and C.D., as more particularly alleged in
12 paragraphs 8 through 24, above, which are hereby incorporated by reference and realleged as if
13 fully set forth herein.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Prescribing Dangerous Drugs or Controlled Substances Without an Appropriate Prior 16 Examination)**

17 26. Respondent is further subject to disciplinary action under sections 2227 and 2234, as
18 defined by section 2242, of the Code, in that he prescribed, dispensed, or furnished dangerous
19 drugs as defined by Section 4022 of the Code, to patient D.L. without an appropriate prior
20 examination and medical indication, as more particularly alleged in paragraphs 8 through 17,
21 above, which are hereby incorporated by reference and realleged as if fully stated herein.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Excessive Prescribing or Treatment)**

24 27. Respondent is further subject to disciplinary action under sections 2227 and 2234, as
25 defined by section 725, of the Code, in that he has committed repeated acts of clearly excessive
26 prescribing drugs or treatment, as determined by the standard of the community of physicians, as
27 more particularly alleged in paragraphs 8 through 24, above, which are hereby incorporated by
28 reference and realleged as if fully set forth herein.

DISCIPLINARY CONSIDERATIONS

28. To determine the degree of discipline, if any, to be imposed on respondent, complainant alleges that an Accusation was filed against respondent on or about October 21, 1988, in a prior disciplinary action entitled *In the Matter of the Accusation against: Benjamin Lehr, M.D.*, Medical Board of California, Division of Medical Quality, Case No. D-3863. The aforementioned Accusation alleged that respondent engaged in unprofessional conduct when he issued improper prescriptions for excessive amounts of controlled substances and dangerous drugs to two patients during the 1985 to 1987 timeframe. On January 14, 1991, respondent's medical license was revoked, the revocation was stayed, and respondent was placed on probation for five (5) years with various terms and conditions, including successful completion of a clinical examination on general medicine with a special emphasis on the proper prescribing of controlled substances, successful completion of an educational program or course related to medical therapeutics, participation in a Peer Physician Counsel Panel program regarding the proper prescribing of controlled substances, and the other standard terms and conditions of probation. That decision is now final and is incorporated by reference as if fully set forth herein.

29. To determine the degree of discipline, if any, to be imposed on respondent, complainant further alleges that another Accusation was filed against respondent on or about March 10, 1999, in a prior disciplinary action entitled *In the Matter of the Accusation against: Benjamin Lehr, M.D.*, Medical Board of California, Division of Medical Quality, Case No. 10-1997-78541. The aforementioned Accusation alleged that respondent engaged in unprofessional conduct when he committed gross negligence and repeated negligent acts, demonstrated incompetence and failed to maintain adequate and accurate medical records in his care and treatment of one (1) patient during the 1995 to 1996 timeframe. On January 24, 2000, respondent's medical license was revoked, the revocation was stayed, and respondent was placed on probation for five (5) years with various terms and conditions, including successful completion of an educational program or course approved by the Board, successful completion of a clinical training program, and the other standard terms and conditions of probation. On August 30, 2002, respondent filed a petition for early termination of his probation which, after an administrative

1 hearing, was granted and his probation was reduced from five (5) years to four (4) years. That
2 decision is now final and is incorporated by reference as if fully set forth herein.

3 **PRAYER**

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Medical Board of California issue a decision:

6 1. Revoking or suspending Physician's and Surgeon's Certificate Number C25019,
7 issued to respondent Benjamin Lehr, M.D.;

8 2. Revoking, suspending or denying approval of respondent Benjamin Lehr, M.D.'s
9 authority to supervise physician assistants, pursuant to section 3527 of the Code;

10 3. Ordering Benjamin Lehr, M.D., if placed on probation, to pay the Board the costs of
11 probation monitoring; and

12 4. Taking such other and further action as deemed necessary and proper.

13
14 DATED: July 9, 2015


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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